

Senate Bill 25 (Ackerman, Perata)
Evidentiary presumptions in enforcement actions

Version: As amended January 14, 2005

Status: In Senate Elections. Hearing postponed.

Executive Summary

This bill creates a presumption that a contribution received in response to a written solicitation from an elective state office candidate or his or her committee is received in response to that solicitation, for that candidate or committee, or for the term of office specified in the solicitation. The bill also repeals two sections related to the now obsolete March state primary election.

Recommendation

Oppose unless amended to apply only to solicitations sent after the bill's effective date, and to delete the language in subdivision (b) declaring that subdivision (a) is "declaratory of existing law." Since SB 54 is substantially the same bill, staff recommends a conforming position on that bill.

Analysis

In addition to repealing two obsolete reporting sections related to the March primary election, this bill would add the following section to the Political Reform Act (the Act):

SECTION 1. Section 89510.5 is added to the Government Code, to read:

89510.5. (a) A contribution solicited in writing by a candidate for elective state office or his or her committee shall identify the candidate or committee soliciting the contribution or the specific term of elective state office for which the contribution is being solicited, or both, and if any contribution is received in response to that written solicitation, there shall be a rebuttable presumption that the contribution was made to that candidate or committee or for that specific term.

(b) The Legislature finds and declares that subdivision (a) is declaratory of existing law.

The Enforcement Division expresses grave concerns over the bill, for two reasons. First, it creates a presumption favoring one class of evidence—campaign solicitations—over all others. There are currently no express evidentiary presumptions in the Act. Under the terms of the bill, a candidate's fundraising solicitation could read, "Senator Knox invites you to his 'Board of Equalization Bash'," a contributor could send a check saying "Here's a check for your second Senate term—go get 'em!" and the candidate *could* successfully argue that the solicitation overrides the clear intent of the donor. Under current law, all evidence—the solicitation, the contribution check with any notations it may have, and the transmittal letter—would be submitted to the trier of fact who would weigh the evidence without any statutory preference for one type over any other.

Second, this bill seeks to change the rules for any pending or yet-to-be filed complaints. It does this by summarily stating "subdivision (a) is declaratory of existing law." If that were the case, the bill would be unnecessary.

Staff-proposed amendments:

SECTION 1. Section 89510.5 is added to the Government Code, to read:

89510.5. (a) A contribution solicited in writing by a candidate for elective state office or his or her committee shall identify the ~~candidate or~~ committee soliciting the contribution ~~or~~ and the specific term of elective state office for which the contribution is being solicited, ~~or both~~, and if any contribution is received in response to that written solicitation, there shall be a rebuttable presumption that the contribution was made ~~to that candidate or committee or~~ for that specific term of office, unless otherwise expressly indicated by the contributor.

(b) The Legislature finds and declares that subdivision (a) is declaratory of existing law.

Discussion needed Staff recommends the Commission discuss and give guidance on the question of whether subdivision (b) should remain in the bill, or whether it should be removed. Removal itself would indicate that the new statute applies only to conduct occurring after the bill's effective date, but language stating that could also be considered.